

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

LISSA CANAVAN, et al.

:

Plaintiffs

: **Civil Action No. 10-954(FSH)**

v.

:

STEPHEN HARBECK, et al.

: **ORDER ON INFORMAL APPLICATION**

:

Defendant

:

This matter having come before the Court by way of letters dated March 31, 2010, regarding the plaintiffs' intention not to dismiss the "federal defendants" and the request of the nonfederal defendants for a telephone conference;

and the Court having conducted a telephone conference on the record on April 5, 2010; and the Court being advised that the Department of Justice intends to enter an appearance for the "federal defendants" and move to substitute the United States for them;

and the Court being advised that plaintiffs intend to challenge the propriety of the substitution;

and the Court being advised that if the United States is substituted, then the proper place for venue is limited to the District of New Jersey and the District of Columbia;

and the Court directing the nonfederal defendants to note this position in their brief so that the Court is aware of the impact of a potential transfer;

and the Court finding that plaintiffs' request for leave to file a motion for summary judgment is premature as no discovery has taken place;

and for the reasons discussed on the record on April 5, 2010;

IT IS THEREFORE ON THIS 5th day of April, 2010

ORDERED that, no later than **April 9, 2010**, the United States shall file its motion to substitute itself as a party and supporting certification on scope of employment of the “federal defendants.” Any opposition to the motion shall be filed no later than **April 19, 2010** and any reply shall be **April 26, 2010**. The return date shall be **May 3, 2010**. The Court will advise the parties if oral argument will be required;

IT IS FURTHER ORDERED that the “federal defendants” shall Answer, move, or otherwise respond to the Complaint no later than **ten calendar days** after the date of the Order resolving the motion for substitution;

IT IS FURTHER ORDERED that, no later than **April 23, 2010**, the nonfederal defendants may file a motion to transfer or change venue and the brief in support thereof shall be no longer than 25 pages. The federal defendants shall submit a letter setting forth their position on transfer no later than **April 29, 2010**. The opposition shall be filed no later than **May 3, 2010** and the reply shall be filed no later than **May 10, 2010**. Because this is a nondispositive motion, no automatic extension under L. Civ. R. 7.1 may be sought. The opposition brief shall be no longer than 25 pages and the reply brief shall be no longer than 15 pages. Nothing herein constitutes a ruling concerning the merits of the motion. The return date shall be **May 17, 2010**. The Court will advise the parties if oral argument will be required;

IT IS FURTHER ORDERED that the nonfederal defendants shall Answer, move, or otherwise respond to the Complaint no later than **ten calendar days** after the date of the Order resolving the motion to transfer;

IT IS FURTHER ORDERED that the request for a stay of discovery is denied. If the

United States is substituted as a party, then the Court will consider its request for a stay pending the resolution of the motion to dismiss for failure to exhaust administrative remedies, but nothing herein constitutes a ruling that such a stay will be granted; and

IT IS FURTHER ORDERED that the plaintiffs' request for leave to file a partial motion for summary judgment on liability is denied at this time as premature.

s/Patty Shwartz
UNITED STATES MAGISTRATE JUDGE